

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

| | | |
|-----------------------------------|---|--------------------------|
| IN THE MATTER OF THE DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | FINAL DECISION AND ORDER |
| | : | 87 REB 337 |
| KAISER REALTY, INC., | : | |
| JOHN P. KAISER AND | : | |
| PHILIP M. KAISER, | : | |
| RESPONDENTS. | : | |

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Kaiser Realty, Inc.
Rt. 1, Box 31A
Hawkins, WI 54530

Philip M. Kaiser
Rt. 1, Box 31A
Hawkins, WI 54530

John P. Kaiser
Rt. 1, Box 31A
Hawkins, WI 54530

Attorney David B. Deda
215 N. Lake Avenue
Phillips, WI 54530

Real Estate Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. John P. Kaiser, Rt. 1, Box 31A, Hawkins, WI 54530, is duly licensed in the state of Wisconsin as a real estate broker (license # 8785), under the provisions of Chapter 452, Wis. Stats., said license expiring on December 31, 1990. This license was first granted on February 20, 1963.

2. Philip M. Kaiser, Rt. 1, Box 31A, Hawkins, WI 54530, is duly licensed in the state of Wisconsin as a real estate broker (license # 8635), under the provisions of Chapter 452, Wis. Stats., said license expiring on December 31, 1990. This license was first granted on May 11, 1973.

3. Kaiser Realty, Inc. is licensed as a corporate real estate broker, license #21397, and has been so licensed under the provisions of Wis. Stats. Ch. 452 since January 1, 1979. Kaiser Realty, Inc., at all times material, has maintained a principal office at Route 1, Box 31A, Hawkins, Wisconsin 54530; and a branch office at 114 Miner Avenue West, Ladysmith, Wisconsin 54848.

4. Patricia M. Oechslin is licensed as a real estate broker, license #36415, and has been so licensed under the provisions of Wis. Stats. Ch. 452 since January 2, 1986.

5. Patricia M. Oechslin, at all times material, was employed as a broker by Kaiser Realty, Inc. at the branch office in Ladysmith, Wisconsin.

6. John P. Kaiser neither admits nor denies the facts set forth pertaining to the Bentley transaction and the Schlosser transaction.

RUPLES TRANSACTION

7. Kaiser Realty, Inc. entered into a residential listing contract with Pamela L. Carrick, a seller, on April 7, 1986, and an amendment to said listing contract on March 31, 1987, granting Kaiser Realty, Inc. the exclusive right from April 7, 1986 to April 7, 1988 to procure a purchaser for the property at 602 West Lake Avenue in Ladysmith, Wisconsin.

8. On May 21, 1987, Rudy and Leone Ruples, Buyers, executed an offer to purchase the property which was drafted by Patricia M. Oechslin. The offer to purchase was accepted by Seller on May 21, 1987.

9. Tender of \$100 earnest money was a term of the offer to purchase.

10. Buyers did, in fact, tender \$100 earnest money to Patricia M. Oechslin with the execution of the offer to purchase on May 21, 1987.

11. Patricia M. Oechslin failed to deposit the \$100 earnest money in Kaiser Realty, Inc.'s real estate trust account at the Pioneer National Bank in Ladysmith, Wisconsin until June 9 or 10, 1987, and, thereby, failed to deposit real estate trust funds in a real estate trust account within 24 hours of receipt.

SCHLOSSER TRANSACTION

12. On January 5, 1987, Helen J. and Robert G. Schlosser, Buyers, executed an offer to purchase property known as the Nitek property located at Route 1, Conrath, Wisconsin. On January 13, 1987, ITT Financial Services, Inc., Seller, submitted a counter-offer and this counter-offer was accepted by Buyers on January 15, 1987. The counter-offer provided for a downpayment of \$1,500 consisting of \$500 earnest money and the balance of \$1,000 due at the time of closing.

13. On or prior to January 15, 1987, Buyers tendered \$500 earnest money by delivery of the earnest money to Patricia M. Oechslin who was acting as the broker-employee of Kaiser Realty, Inc. for this transaction.

14. Patricia M. Oechslin failed to deposit the \$500 earnest money in the real estate trust account for Kaiser Realty, Inc. at the Pioneer National Bank in Ladysmith, Wisconsin, until January 26 or 27, 1987, and, thereby, failed to deposit real estate trust funds in a real estate trust account within 24 hours of receipt.

BENTLEY TRANSACTION

15. John P. Kaiser, at all times material, was an officer of Kaiser Realty, Inc. and acted as a broker-agent for Kaiser Realty, Inc.

16. On October 25, 1986, Thomas Joseph Bentley, Buyer, executed an offer to purchase property known as the Ellwanger property located in Rusk County, Wisconsin, and this offer to purchase was accepted by Gerald and Patricia Ellwanger, Sellers. The offer to purchase provided for earnest money of \$200 to be paid by Buyer within 7 days of acceptance of the offer to purchase.

17. Buyer delivered the \$200 earnest money to John P. Kaiser between November 14, 1986 and November 26, 1986.

18. John P. Kaiser failed to deposit the \$200 earnest money in the real estate trust account for Kaiser Realty, Inc. at the Pioneer National Bank in Ladysmith, Wisconsin until December 5, 1986.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Sec. 452.14, Wis. Stats.

2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to Sec. 227.44(5), Wis. Stats.

3. The Wisconsin Real Estate Board finds that Kaiser Realty, Inc., by the conduct of Patricia M. Oechslin as set forth above, and in the attached Stipulation, has violated sec. RL 18.03(1)(b), Wis. Admin. Code, by failing to deposit the \$100 earnest money from the Ruples transaction, into a real estate trust account within 24 hours.

4. The Wisconsin Real Estate Board finds that Kaiser Realty, Inc., by the conduct of Patricia M. Oechslin as set forth above, and in the attached Stipulation, has violated sec. RL 18.03(1)(b), Wis. Admin. Code, by failing to deposit the \$500 earnest money from the Schlosser transaction, into a real estate trust account within 24 hours.

5. The Wisconsin Real Estate Board finds that Kaiser Realty, Inc., by the conduct of John P. Kaiser as set forth above, and in the attached Stipulation, has violated sec. RL 18.03(1)(b), Wis. Admin. Code, by failing to deposit the \$200 earnest money from the Bentley transaction, into a real estate trust account within 24 hours.

6. The Wisconsin Real Estate Board finds that John P. Kaiser by his conduct as set forth above, and in the attached Stipulation, has violated sec. RL 18.03(1)(b), Wis. Admin. Code, by failing to deposit the \$200 earnest money from the Bentley transaction, into a real estate trust account within 24 hours.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted and approved.

IT IS FURTHER ORDERED, that John P. Kaiser (broker license # 8785) is hereby REPRIMANDED.

IT IS FURTHER ORDERED, that Kaiser Realty, Inc. (corporate broker license # 21397) is hereby REPRIMANDED.

IT IS FURTHER ORDERED, that counts three, eight and nine of the complaint are dismissed in accordance with the Stipulation.

IT IS FURTHER ORDERED, that each party shall bear its own costs.

Dated this 14th day of Dec., 1989.

WISCONSIN REAL ESTATE BOARD

by: Linda L. Schlaversky

knj/12953

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

| | | |
|----------------------------------|---|-------------|
| IN THE MATTER OF | : | |
| DISCIPLINARY PROCEEDINGS AGAINST | : | STIPULATION |
| | : | 87 REB 337 |
| KAISER REALTY, INC., | : | |
| JOHN P. KAISER AND | : | |
| PHILIP M. KAISER, | : | |
| RESPONDENTS. | : | |

It is hereby stipulated and agreed between Kaiser Realty, Inc. and John P. Kaiser, their Attorney David B. Deda, and Kenneth N. Johnson, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. That a Complaint consisting of nine counts was filed against Kaiser Realty, Inc., John P. Kaiser, Philip M. Kaiser and Patricia M. Oechslin, respondents herein, on August 1, 1989 and subsequently duly served.

2. Kaiser Realty, Inc. and John P. Kaiser understand that by the signing of this Stipulation they voluntarily and knowingly waive their rights, including: the right to a hearing on the allegations against each of them, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against each of them; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify themselves; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to each of them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Kaiser Realty, Inc. and John P. Kaiser each agree to the adoption of the attached Final Decision and Order by the Real Estate Board, and agree that the Real Estate Board may reprimand each of them.

4. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings.

5. If the Board accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

6. Kaiser Realty, Inc. is a real estate corporation licensed to practice in the State of Wisconsin pursuant to license # 21397, which was granted on January 1, 1979.

7. John P. Kaiser is a real estate broker licensed to practice in the State of Wisconsin pursuant to license # 8785, which was granted on February 20, 1963.

8. If any term or condition of this Stipulation and the attached Final Decision and Order is not approved by the Wisconsin Real Estate Board, then no term of the Stipulation and attached Final Decision and Order shall be binding in any manner upon any party, and shall be void and have no effect, and the parties shall be restored to their respective positions as they existed at the time of the execution of this Stipulation, and more specifically, the matter will be scheduled for further proceedings by the Hearing Examiner assigned to this matter.

9. That the Department of Regulation and Licensing, Division of Enforcement agrees that the Complaint filed August 1, 1989 in this matter is amended so as to be consistent in each respect with the Findings of Fact and Conclusions of Law set forth in the attached Final Decision and Order with respect to Respondents Kaiser Realty, Inc., John P. Kaiser, and Philip M. Kaiser.

10. The Division of Enforcement agrees that Count Three of the Complaint against Philip M. Kaiser may be dismissed. As grounds therefor, the undersigned attorney for the Division of Enforcement states that evidence has been brought forth since the filing of the Complaint which affirmatively shows Philip M. Kaiser did not violate state statutes or administrative rules governing the practice of real estate.

11. The Division of Enforcement agrees that Counts Eight and Nine of the Complaint against John P. Kaiser and Kaiser Realty, Inc., respectively, may be dismissed. As grounds therefor, the undersigned attorney for the Division of Enforcement states that evidence has been brought forth since the filing of the Complaint which affirmatively shows that no violation of state statutes or administrative rules governing the practice of real estate occurred as alleged.

12. The Division of Enforcement joins Kaiser Realty, Inc., John P. Kaiser, and Attorney David B. Deda in recommending the Real Estate Board adopt this Stipulation and issue the attached Final Decision and Order.

13. The parties to this stipulation agree that the attorney for the Division of Enforcement may appear before the Real Estate Board for the sole purpose of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

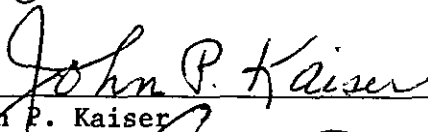
14. That pursuant to Wis. Stat. Sections 227.44(4) and 452.14, the Wisconsin Real Estate Board has jurisdiction and authority to enter into this Stipulation and to issue the attached Final Decision and Order.

15. That this Stipulation may be submitted directly to the Wisconsin Real Estate Board and need not be submitted to Wayne Austin, the Hearing Examiner appointed in this matter.

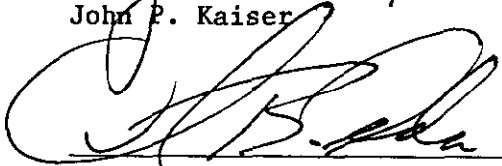
16. Kaiser Realty, Inc. and John P. Kaiser enter into this Stipulation with the advice and consent of their attorney, David B. Deda.


For Kaiser Realty, Inc.

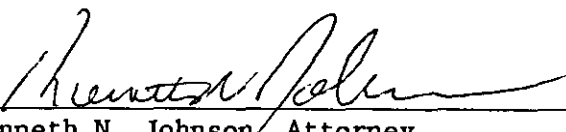
11-30-89
Date


John P. Kaiser

11-30-89
Date


David B. Deda
Attorney for Kaiser Realty, Inc. and
John P. Kaiser

11-29-89
Date


Kenneth N. Johnson, Attorney
Division of Enforcement

12-1-89
Date

knj/12949

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each and the identification
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with State of Wisconsin Real Estate Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon State of Wisconsin Real Estate Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: State of Wisconsin Real Estate Board.

The date of mailing of this decision is December 15, 1989.

WLD:dms
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly as may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.